

By Guempel

H.C.R. No. 215

CONCURRENT RESOLUTION

1 WHEREAS, AT&T Communications of the Southwest, Inc., alleges
2 that:

3 (1) it provided telecommunications services to the state
4 from December 1, 1985, through August 31, 1987, pursuant to a
5 written contract;

6 (2) after the contract term expired, and for an additional
7 period of one year, during which the state could and would proceed
8 with the bidding process for a replacement system, the state wished
9 to continue to obtain telecommunications services from AT&T;

10 (3) to continue those services, the 70th Legislature,
11 Regular Session, 1987, amended Section 87B of the Public Utility
12 Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes),
13 which reads in part:

14 Sec. 87B. A telecommunications utility providing
15 dedicated line long distance service (TEXAN) to the
16 state on August 31, 1987, shall continue to have this
17 type of service available to the state on a
18 month-to-month contract basis until September 1, 1988.
19 The contract will become effective on September 1,
20 1987, and shall be under terms and conditions
21 negotiated by the state and the utility in accordance
22 with the amounts appropriated by the General
23 Appropriations Act for this purpose

24 (4) during the appropriations process AT&T advised a
25 legislative employee that a monthly appropriation of \$757,425 would
26 be required to extend the services provided under the contract on a
27 month-to-month basis during the period of the extension;

28 (5) the 70th Legislature did not appropriate the amount

1 indicated by AT&T, but approved a lower monthly appropriation of an
2 amount not to exceed \$476,190.48 to cover the extension period;

3 (6) during 1987, AT&T met with employees of the State
4 Purchasing and General Services Commission on numerous occasions to
5 negotiate the services to be provided from September 1, 1987, until
6 September 1, 1988, and the rates, terms, and conditions for those
7 services;

8 (7) in the absence of an immediate agreement between AT&T
9 and the state on the cost of the services to be provided during the
10 extension period, AT&T and the state agreed that AT&T would provide
11 the requested services to the state during the extension period and
12 that AT&T and the state would continue to negotiate the monthly
13 amount to be paid for those services;

14 (8) an express contract arose between the state and AT&T
15 obligating the state to pay AT&T a reasonable sum for the services
16 it provided month-to-month at the state's request during the
17 extension period;

18 (9) for each of the 12 months from September 1987 to and
19 including August 1988, AT&T provided to the state all services
20 requested and billed the state the reasonable amount due and owing
21 for those services;

22 (10) the state accepted the services, but refused to submit
23 payment in the amount specified and billed by AT&T and tendered
24 payments only in the lower monthly amount applicable to the expired
25 contract;

26 (11) as of October 13, 1988, the state had breached the
27 agreement and wrongly withheld payment in the amount of at least

1 \$3,374,814.24 owed to AT&T, interest due, other damages, and court
2 costs;

3 (12) in the alternative, an implied contract arose between
4 the state and AT&T, obligating the state to pay AT&T at least
5 \$3,374,814.24, interest due, other damages, and court costs; and

6 (13) in the alternative, AT&T is entitled to recover in
7 quantum meruit a reasonable sum for the services it provided to the
8 state from the termination of the contract on August 31, 1987,
9 until August 31, 1988. A reasonable sum for those services is at
10 least \$3,374,814.24 greater than the amount that AT&T has been paid
11 by the state; now, therefore, be it

12 RESOLVED by the Legislature of the State of Texas, That AT&T
13 Communications of the Southwest, Inc., is granted permission to sue
14 the State of Texas and the State Purchasing and General Services
15 Commission subject to Chapter 107, Civil Practice and Remedies
16 Code, as added by Chapter 524, Acts of the 70th Legislature,
17 Regular Session, 1987; and, be it further

18 RESOLVED, That the chairman of the State Purchasing and
19 General Services Commission be served process as provided by
20 Section 107.002(a)(3), Civil Practice and Remedies Code, as added
21 by Chapter 524, Acts of the 70th Legislature, Regular Session,
22 1987.

* H. C. R. No. 275

By Knapp

HOUSE CONCURRENT RESOLUTION

granting AT&T Communications permission to sue the state.

MAY 17 1989

1. Filed with the Chief Clerk.

MAY 17 1989

2. Read first time and referred to Committee on

Judicial Affairs

3. Reported favorably (as amended) and sent to Printer at _____ M.
unfavorably (time)

4. Printed and distributed at _____ M.
(time)

5. Sent to Committee on Calendars at _____ M.
(time)

6. Read and (adopted) (failed) (as amended) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, _____ present, not voting).

7. Ordered Engrossed _____ M.
(time)

8. Engrossed.

9. Returned to Chief Clerk at _____ M.
(time)

10. Sent to Senate.

Chief Clerk of the House

_____ 11. Received from the House.

_____ 12. Read first time and referred to Committee on _____

_____ 13. Reported favorably.

_____ 14. Ordered not printed by the Senate.

_____ 15. Immediate consideration ordered by (unanimous consent)
(_____ yeas, _____ nays)

_____ 16. Read and adopted.

Secretary of the Senate

_____ 17. Returned to the House.

_____ 18. Received from the Senate (with amendments).

_____ 19. House (Concurred) (Refused to Concur) in Senate Amendments by a (Non-Record
Vote) (Record Vote of _____ yeas, _____ nays, _____ present,
not voting).

_____ 20. Conference Committee Ordered.

_____ 21. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 22. Ordered Enrolled at _____ : _____ M.
(time)